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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
R. KEVIN CLINTON
COMMISSIONER

STEVEN H. HILFINGER
DIRECTOR

July 19, 2012

Re: Legality of Return Check Fees on Installment Sales Contracts

Dear Installment Seller/Sales Finance Licensee:

The Office of Financial and Insurance Regulation (OFIR) has recently learned that a licensee under the Motor Vehicle Sales Finance Act (MVSFA)¹, which acquired motor vehicle sales contracts by way of assignment, had been engaged in the practice of charging motor vehicle sales customers a \$25 fee for insufficient funds (NSF) checks, even though the motor vehicle installment sales contract between the buyer and the seller did not provide for the assessment of such fees. The purpose of this letter is to inform you that such a practice is a violation of the MVSFA.

OFIR is statutorily charged with the responsibility and authority to implement and administer the MVSFA, which regulates both the business of an installment seller of motor vehicles under installment sale contracts and the business of a sales finance company within the state of Michigan. A licensee under the MVSFA is also bound by the provisions of the Credit Reform Act, (CRA).² The CRA specifically defines a licensee under the MVSFA as a “regulated lender” under the CRA.³ The CRA also empowers OFIR with administrative authority.

Section 12(a) of the MVSFA states that “[a]n installment sale contract shall be in writing, and shall contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold”⁴ Section 12(b) of the MVSFA states that, “[a]n installment sale contract shall be completed as to all essential provisions. . . .”⁵ Section 13(5) of the MVSFA lists a number of additional clauses that are required in a valid contract, including “specific provisions concerning the buyer’s liability for default charges . . . in case of default or other breach of contract. . . .”⁶

The MVSFA is clear that the contract must contain all of the agreements between the buyer and the seller.⁷ The MVSFA is also clear that any default charges for breaching the motor vehicle installment sale contract must be specified in the contract itself.⁸ An NSF check constitutes a

¹ MCL 492.101 *et seq.*

² MCL 445.1851 *et seq.*

³ MCL 445.1852(i).

⁴ MCL 492.112(a).

⁵ MCL 492.112(b).

⁶ MCL 492.113(5).

⁷ MCL 492.112(a).

⁸ MCL 492.113(5).

breach of the installment sale contract as it involves the buyer not making a scheduled payment to the seller or the holder. A fee for an NSF check constitutes a default charge that occurs when the buyer fails, in a specific fashion, to make the payments required by the contract. Unless that fee is included in the motor vehicle installment sale contract, assessing such a fee violates the MVSFA.

While the CRA specifically allows a regulated lender to “charge a fee not to exceed \$25.00 for a check or other payment instrument that is dishonored because of insufficient funds in the account on which the check or instrument is drawn,”⁹ nothing in the CRA mandates that such a fee be charged.¹⁰ Moreover, that provision cannot unilaterally add terms to a contract previously entered into under the MVSFA unless the MVSFA’s requirement of inclusion within the contract is also satisfied. A successor in interest to the motor vehicle sale contract is bound by the terms of that contract. A successor in interest by assignment or otherwise to a contract entered into under the MVSFA may not assess a \$25 NSF fee if it has not been otherwise disclosed in that contract.

If you have questions or concerns relating to this matter, please call the Office of Financial and Insurance Regulation, Consumer Finance Section toll free at (877) 999-6442.

Sincerely,

Mark W. Weigold, Director
Consumer Finance Section
Office of Financial and Insurance Regulation

⁹ MCL 445.1856(2).

¹⁰ MCL 445.1856(2).